

referencing Fig. 6). In addition, the Rothbart '314 device is clearly intended to be a "foot support system" (Col. 6, L. 14) having an elongate bed "on which a portion of the foot rests" (Col. 6, L. 16). Rothbart '314 claims an "elongate bed" extending along "the first toe and first metatarsal" (Col. 10, L. 54 and Col. 12, L. 18). More specifically, the "portion of the foot" to be supported by the device is the "medial column of the foot" (Col. 6, L. 19), extending from the "hallux to the navicular" (Col. 6, L. 19-20). This language indicates that Rothbart '314 differentiates the toe and first metatarsal and targets a portion of the foot, specifically the medial column, as apposed to the toe alone. Furthermore, this language differentiates the Rothbart '314 apparatus from the instant device, which is intended to provide direct support only to the toe and immediate area. Claims 1 and 10 of the instant application refer only to the toe and claims 2, 3, 11, 12 and 13 depend from these two claims, therefore it is believed that these claims all contain limitations not disclosed by Rothbart '314. Accordingly, withdrawal of this rejection is respectfully requested.

III. Rejections Under 35 U.S.C. § 103

With regards to the rejection of claims 4 and 5 under 35 U.S.C. 103(a) as being obvious over Rothbart '314, Applicant respectfully traverses this rejection on the grounds that the Rothbart '314 reference teaches away from the instant device. The focus of the instant device is direct support of the immediate toe area. Rothbart '314 is clearly targeted at an entire area of the foot "from the hallux 48 to the navicular 28" (Col. 6, L. 19-20). Furthermore, Rothbart '314 teaches that the back edge of the device may lie in a position posterior to the first metatarsal and more specifically, the back edge should extend into an area between the posterior end of the first metatarsal and the anterior end of the plantar surface of the calcaneus (Col. 6, L.30-37). Such a placement allows for "the medial column of the foot [to be] supported in an elevated position relative to the remainder of the foot" (Col. 6, L. 59-61). Rothbart '314 teaches that the purpose of placing the device beneath the medial column of the foot is "to support the medial column of the foot in its anatomical neutral position" (Col. 6, L. 6-8). The instant device in elevating and supporting the immediate toe area, produces a retrograde buckling force that allows the first metatarsal to declinate to the floor. Thus, Rothbart '314 clearly teaches away from the instant device. Accordingly, withdrawal of this rejection is respectfully requested.

With regards to the rejection of claims 7-9 and 15-17 under 35 U.S.C. 103(a) as being unpatentable over Rothbart '314 in view of either Brock '927 or Jacoby '046, Applicant respectfully traverses this rejection on the grounds that the Rothbart '314 reference teaches away from the instant device. The focus of the instant device is direct support of the immediate toe area. Rothbart '314 is clearly targeted at an entire area of the foot "from the hallux 48 to the navicular 28" (Col. 6, L. 19-20). Furthermore, Rothbart '314 teaches that the back edge of the device may lie in a position posterior to the first metatarsal and more specifically, the back edge should extend into an area between the posterior end of the first metatarsal and the anterior end of the plantar surface of the calcaneus (Col. 6, L. 30-37). Such a placement allows for "the medial column of the foot [to be] supported in an elevated position relative to the remainder of the foot" (Col. 6, L. 59-61). Rothbart '314 teaches that the purpose of placing the device beneath the medial column of the foot is "to support the medial column of the foot in its anatomical neutral position" (Col. 6, L. 6-8). The instant device elevates and supports the immediate toe area, producing a retrograde buckling force that allows the first metatarsal to declinate to the floor. Thus, Rothbart '314 clearly teaches away from the instant device. Accordingly, withdrawal of this rejection is respectfully requested.

Regarding the rejection of claims 6 and 14 under 35 U.S.C. 103(a) as being unpatentable over Rothbart '314 in view of McMahon et al. (5,881,478), Applicant respectfully traverses this rejection on the grounds that the Rothbart '314 reference teaches away from the instant device. The focus of the instant device is direct support of the immediate toe area. Rothbart '314 is clearly targeted at an entire area of the foot "from the hallux 48 to the navicular 28" (Col. 6, L. 19-20). Furthermore, Rothbart '314 teaches that the back edge of the device may lie in a position posterior to the first metatarsal and more specifically, the back edge should extend into an area between the posterior end of the first metatarsal and the anterior end of the plantar surface of the calcaneus (Col. 6, L. 30-37). Such a placement allows for "the medial column of the foot [to be] supported in an elevated position relative to the remainder of the foot" (Col. 6, L. 59-61). Rothbart '314 teaches that the purpose of placing the device beneath the

medial column of the foot is "to support the medial column of the foot in its anatomical neutral position" (Col. 6, L. 6-8). The instant device elevates and supports the immediate toe area, producing a retrograde buckling force that allows the first metatarsal to declinate to the floor. Thus, Rothbart '314 clearly teaches away from the instant device. Accordingly, withdrawal of this rejection is respectfully requested.

CONCLUSION

The Applicant believes this paper to be responsive to every issue raised by the Examiner in the Office Action dated December 1, 2001. If this belief is incorrect, or other issues arise, please do not hesitate to contact the undersigned or his associates at the telephone number listed below. Claims 1-23 have been shown to be patentable over the prior art of record. Accordingly, this application is now considered to be in condition for allowance and favorable action in the form of a Notice of Allowance is respectfully requested. Please apply any charges not covered, or any credits, to Deposit Account 50-0591 (Reference Number [09166.002001]).

Respectfully submitted,

Date: 3/16/02



Jonathan P. Osha, Reg. No. 33,986
Rosenthal & Osha L.L.P.
One Houston Center, Suite 2800
1221 McKinney Avenue
Houston, TX 77010
Telephone: (713) 228-8600
Facsimile: (713) 228-8778